

17 SEP 1962

[Signature] D.C.

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deceptive acts or practices affecting the conduct of trade or commerce in the State of Tennessee in violation of Tenn. Code Ann. § 47-18-104(a), and further contends that such acts and practices constitute violations of Tenn. Code Ann. § 47-18-104(a), (b)(2), (b)(5), (b)(7), and (b)(27).

2. Based upon the multistate investigation of Respondent, the State of Tennessee alleges, upon information and belief, the following:

(A) Respondent is a pharmacy benefit manager (“PBM”) which administers pharmacy benefit programs for, among other entities, employers and health plans which contract with employers (“Clients”). In order to provide those benefits, Respondent contracts with pharmaceutical manufacturers to receive rebates or other payments tied to the utilization of brand drugs. Respondent contracts with pharmacies to dispense drugs to the individual members of client plans for whom Respondent is providing a drug benefit. Respondent also operates its own mail order pharmacies which dispense drugs.

(B) The Attorneys General contend that not all of Respondent’s activities in the past have been consistent with its representations to consumers and Client Plans. The Attorneys General contend that Respondent may have engaged in or promoted some drug switches which may have resulted in additional medical costs to consumers or Respondent’s Client Plans, and that Respondent did not reimburse consumers or Client Plans for these medical costs. The Attorneys General further contend that Respondent engaged in drug switches on the grounds that such switches would result in cost savings to Client Plans and consumers when these switches may have actually involved little or no cost savings, before consideration of any rebates to the Client Plans. The Attorneys General contend that in certain instances switches were made to a more expensive drug on an Average Wholesale Price basis.

(C) The Attorneys General contend that Respondent may have distributed literature and promotional materials which did not adequately disclose the extent to which the literature or promotional materials were funded by drug manufacturers. The Attorneys General also contend that Respondent did not adequately define pricing terms used in its Client contracts, such as “rebate” and “MAC.” The Attorneys General also contend that Respondent failed to adequately disclose that Phoenix Marketing Group, a subsidiary of Respondent since 2002, provided sample fulfillment services to manufacturers for brand drugs which were not always on Respondent’s national formularies.

3. Upon completion of the multistate investigation, the Division requested that the Attorney General negotiate, and if possible accept, an Assurance of Voluntary Compliance in accordance with the provisions set forth in Tenn. Code Ann. § 47-18-107.

4. The Attorney General entered into multistate negotiations with Respondent and the parties have agreed to, and the Division has approved, the Assurance of Voluntary Compliance filed contemporaneously herewith and incorporated herein by reference.

5. The Assurance of Voluntary Compliance addresses certain practices which the Attorney General contends to be in violation of Tenn. Code Ann. § 47-18-104(a), (b)(2), (b)(5), (b)(7), and (b)(27), and which contentions Respondent disputes, as set forth further therein.

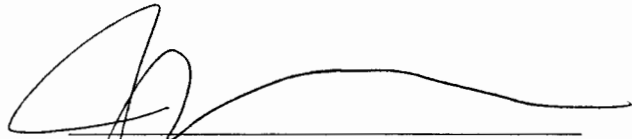
6. In accordance with the provisions of Tenn. Code Ann. § 47-18-107(c), the execution, delivery and filing of the Assurance does not constitute an admission of prior violation of the Act.

7. The Division, the Attorney General, and the Respondent have jointly agreed to the Assurance of Voluntary Compliance and join in its filing.

PREMISES CONSIDERED, Petitioner prays

1. That this Amended Petition be filed without cost bond pursuant to the provisions of Tenn. Code Ann. §§ 20-13-101 and 47-18-116.
2. That the Assurance of Voluntary Compliance be approved and filed in accordance with the provisions of the Tennessee Consumer Protection Act.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Peacock', is written over a horizontal line.

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